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ABSTRACT

The regulations outline procedures and policies for resolving disputes in special education in the U.S. Department of Defense Dependents schools. Processes involved in conferences, mediation, and due process hearings concerning issues of identification, eligibility, individualized education programs, or programing are outlined. At each of the three levels (conference, mediation, due process hearing) information is specified regarding responsible official, membership, procedure, results, and distribution of documents. Sample forms are included, as are details of the procedures for conducting due process hearings. (CL)

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OFFICE OF DEPENDENTS SCHOOLS
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DS REGULATION 2500.10
DATE: December 17, 1982

EDUCATION

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS
Special Education Dispute Management System

References: (a) Public Law 94-142, "Education for All Handicapped Children Act of 1975," as amended (20 U.S.C. §§1401 et seq. (1976 and Supp. IV 1980))

(b) Public Law 95-561, "Defense Dependents' Education Act of 1978," as amended, (20 U.S.C. §§921-932 (Supp. IV 1980))

(c) DoD Instruction 1342.12, "Education of Handicapped Children in the DoD Dependents Schools," December 17, 1981

(d) DS Manual 2060.1, "Mediation in Education," July 26, 1981

A. PURPOSE

This regulation provides guidance for implementing DoD Instruction 1342.12, enclosure 4, Hearing Procedures, and establishes policies and procedures governing the management of potential and actual disputes arising under DoD Instruction 1342.12.

B. APPLICABILITY AND SCOPE

The provisions of this regulation apply to Department of Defense Dependents Schools (DoDDS) personnel, parents and guardians, non-DoDDS schools in which DoDDS is responsible for a student, and students receiving or entitled to receive educational instruction from DoDDS. This regulation does not create any rights or remedies and may not be relied upon by any party to allege a denial of the procedural or substantive guarantees of Public Law 94-142, DoD Instruction 1342.12, or any other authority. To the extent that this regulation conflicts with DoD Instruction 1342.12, the Instruction shall govern.

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C. POLICIES AND PROCEDURES

1. Whenever a parent or guardian and a school operated by DoDDS, or a school in which DoDDS is responsible for a student, have a dispute regarding the identification, the eligibility for special education and related services, the individualized education program, or the free appropriate education provided to a child who is handicapped or who may have a handicapping condition, and who is enrolled or entitled to be enrolled in a DoDDS school, this dispute management system shall be followed in order to promote the resolution of that dispute.

2. The dispute management system shall offer each of the proceedings listed here in the order shown:

a. Conference - Informal attempt or series of attempts to identify and resolve the actual or potential special education dispute.

b. Mediation - An attempt to resolve the dispute by discussion. School officials or, in the case of a child for whom DoDDS is responsible in a non-DoDDS school, regional officials should offer mediation not later than 10 days after the date of the parent's or guardian's request. Alternatively, school or regional officials may themselves request that the parent or guardian mediate a special education dispute. If the offer is not in writing, the school official must promptly document the offer.

c. Due Process Hearing - Formal hearing conducted pursuant to DoD Instruction 1342.12, enclosure 4.

3. The proceedings and components of the dispute management system are:

a. Conference

(1) Responsible Official - Local school principal.

(2) Participants

(a) School Representative (local school principal or designee).

(b) Parent(s) or Guardian.

(3) Procedure - A conference should clearly define the areas of disagreement over special education or related services and consist of an informal discussion centering upon possible solutions.

(4) Results

(a) Agreement - a memorandum for the record outlining the problems and the agreed upon solution (enclosure 2). If the conference occurs during a Case Study Committee meeting, the minutes of the meeting may suffice.

(b) Disagreement

1 A Request for Mediation, written by the school principal or designee, stating very generally the unresolved areas of disagreement, and signed by a parent or guardian and the principal or designee (enclosure 3); or

2 A Waiver of Mediation Process at the option of the parent or guardian, a written statement signed by the parent or guardian refusing mediation (enclosure 4).

(Both the Request for Mediation and the Waiver of Mediation Process should acknowledge that the parent or guardian has been informed of his or her due process rights under DoD Instruction 1342.12, and that he or she has been informed about the next phase in the dispute management system.)

(5) Distribution of Documents

(a) Memorandum For the Record

1 Maintain the original in local school files.

2 Send a copy to parent or guardian.

3 Send a copy to the regional office upon request.

(b) Request for Mediation or Waiver of Mediation Process

1 Send the original to the regional office.

2 Send copies to participating parties.

3 Send a copy to ODS in the event of waiver of mediation.

4 Maintain a copy in local school files.

b. Mediation

(1) Responsible Official - Educational Mediator appointed by the regional office.

(2) Participants

(a) Educational Mediator.

(b) School Representative (local school principal or designee).

(c) Parent(s) or Guardian.

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(3) Procedure

Mediation can be initiated by a parent or guardian or by DoDDS in order to resolve a disagreement with respect to the identification, the evaluation, the eligibility for special education and related services, the individualized education program, or the free appropriate public education provided to a child who is handicapped or who may have a handicapping condition. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parents or guardian and the school in an effort to resolve those differences.

Mediation must be conducted, attempted, or refused in writing by a parent or guardian of the handicapped child whose education is at issue before a request for, or initiation of, a hearing. Any request by DoDDS for a hearing shall state how this requirement has been satisfied. No stigma may be attached to the refusal by a parent or guardian to mediate, or to an unsuccessful attempt to mediate.

(4) Results

(a) Agreement - A Mediation Agreement Report written by the mediator addressing all issues decided at the meeting, setting forth the resolutions of those issues, and signed by all participants (enclosure 5).

(b) Disagreement - A Mediation Report written by the mediator addressing all issues discussed at the meeting and setting forth areas of agreement and disagreement. A parent or guardian should be asked to sign the Mediation Report, which must contain the statement that the parent or guardian has been informed of his or her due process rights under DoD Instruction 1342.12 and that he or she has been informed of the next phase in the dispute management system (enclosure 6).

(5) Distribution of Documents

(a) Send the original to the regional office.

(b) Send a copy to each participant.

(c) Send a copy to ODS.

(d) Maintain a copy in local school files.

c. Due Processing Hearing

For this portion of the Dispute Management System, refer to DoD Instruction 1342.12, enclosure 4, Hearing Procedures.

D. EFFECTIVE DATE

This regulation is effective immediately. Regional and local supplementation is prohibited, except by express written permission of the Director, DoDDS.

Beth Stephens

Beth Stephens, Ph.D.
Director

Enclosures

DISTRIBUTION: X, Q

SPECIAL EDUCATION DISPUTE MANAGEMENT SYSTEM

LEVEL	RESPONSIBLE OFFICIAL	MEMBERSHIP	PROCEDURE	RESULTS	DISTRIBUTION
Conference	Local school principal	Principal/ Designee and Parent or Guardian	An informal discussion that clearly defines area of educational disagreement and centers on possible solutions	Agreement: Memorandum For the Record	a. Maintain original in local school files b. Send copy to parent or guardian c. Send copy to regional office upon request
				Non-Agreement: 1. Request for Mediation 2. Written parental statement refusing mediation	a. Send copy to each participant b. Send original to regional office c. Send copy to ODS d. Maintain copy in local school files
Mediation	Educational mediator appointed by the region	Mediator, school representative, and parent or guardian	Discussion to resolve differences that should conclude in a written statement	Agreement: Mediation Agreement Report Non-Agreement: Mediation Report	a. Send copy to each participant b. Send original to regional office c. Send copy to ODS d. Maintain copy in local school files
Due Process Hearing	Hearing Officer appointed by Asst. Secretary of Defense (MRA&L), or Designee	Hearing Officer, School Personnel, Parent or Guardian Legal Counsel, Recorder, (The student), (Witnesses)	Establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case	Verbatim Written or Electronic Transcript: 1. Available to parent or guardian upon reque 2. Maintained at regional office Findings of Fact and Decision: 1. Regional director, parent or guardian, ODS 2. National Advisory Panel (with all personally identifiable material removed)	

Enclosure 1

1-1

DISPUTE MANAGEMENT LEVEL CONFERENCE

MEMORANDUM FOR THE RECORD

School _____ Date _____

Principal _____ Parents or Guardian _____

Child _____

Enrollment Status of Student Under DoD Directive 1342.13:
Space-Required ( )
Space-Available ( )

Basis for Status (e.g., sponsor's agency) _____

*ISSUE OR ISSUES UNDER DISCUSSION:

SOLUTIONS:

SIGNATURES:

_____
Parent or Guardian

_____
Principal or Designee

- - - -

DISPUTE MANAGEMENT LEVEL CONFERENCE

REQUEST FOR MEDIATION

School _____ Date _____

Student's Name _____

Enrollment Status of Student Under DoD Directive 1342.13:
Space-Required ( )
Space-Available ( )

Basis for Status (e.g., sponsor's agency) _____

Why is mediation being requested?

I have met with the principal or designee to discuss the educational issue(s) stated above concerning my child. I do not feel that the issue has been resolved. The principal or designee has fully explained, and I completely understand my due process rights under DoD Instruction 1342.12. The principal or designee has explained that the next step in resolving the issue is mediation, unless I waive my right to mediation.

_____
Parent or Guardian Signature Required

_____
Signature of Principal or Designee Required

- -

DISTRIBUTION: ____ Send the original to the regional office.
____ Send copies to participating parties.
____ Send a copy to ODS.
____ Maintain a copy in local school files.

Enclosure 3

DISPUTE MANAGEMENT LEVEL CONFERENCE

WAIVER OF MEDIATION PROCESS

School _____ Date _____

Student's Name _____

Enrollment Status of Student Under DoD Directive 1342.13:
Space-Required ( )
Space-Available ( )

Basis for Status (e.g., sponsor's agency) _____

ISSUE OR ISSUES UNDER DISCUSSION:

I have met with the principal or designee to discuss the educational issues stated above concerning my child. The principal or designee has fully explained, and I completely understand my due process rights under DoD Instruction 1342.12. The principal or designee has explained that the next step in resolving the issue is mediation. I do not wish to take part in a mediation process and waive my right to mediation under DoD Instruction 1342.12. The principal or designee has explained that the next step is to submit a written request for a due process hearing, in the form of a petition, setting forth the facts, issues, and proposed relief, to the DoDDS regional director who has educational responsibility for my child. I understand that no stigma may be attached to my refusal to mediate.

_____

Signature of Parent or Guardian Required

_____

Signature of Principal or Designee Required

- -

DISTRIBUTION:
_____ Send the original to the regional office.
_____ Send copies to participating parties.
_____ Send a copy to ODS.
_____ Maintain a copy in local school files.

DISPUTE MANAGEMENT LEVEL MEDIATION

MEDIATION AGREEMENT

Child's Name: _____

Address: _____

School: _____

Representative: _____

Address: _____

Date: _____

Enrollment Status of Student Under DoD Directive 1342.13:
Space-Required ( )
Space-Available ( )

Basis for Status (e.g., sponsor's agency) _____

See DS Manual 2060.1 for sample Mediation Agreements.

_____ _____
Date Complainant

_____ _____ _____
Mediator/Witness Respondent

- -

DISTRIBUTION: _____ Send the original to the regional office.
_____ Send copies to participating parties.
_____ Send a copy to ODS.
_____ Maintain a copy in local school files.

Enclosure 5

HEARING PROCEDURES

A. PURPOSE

This enclosure establishes adjudicative requirements whereby the parents of handicapped children and DoDDS are afforded impartial due process hearings with respect to the identification, evaluation, and educational placement of, and the free appropriate public education provided to, such children by the Department of Defense, in accordance with P.L. 94-142 (reference (a)) and P.L. 95-561 (reference (b)).

B. ADMINISTRATION

1. The DoDDS Regional Director with responsibility for the handicapped child whose education is at issue shall be responsible for the hearings conducted under this Instruction.

2. This Instruction shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

3. Impartial hearing officers shall be appointed by the ASD(MRA&L), or designee, and shall be attorneys who are independent of DoDDS and members in good standing of the bar of any state, the District of Columbia, or a territory or possession of the United States.

4. Counsel normally shall appear and represent DoDDS in proceedings conducted under this Instruction. A parent shall have the right to be represented in such proceedings at no cost to the government by counsel or a personal representative.

C. MEDIATION

1. Mediation can be initiated by either a parent or DoDDS in order to resolve informally a disagreement with respect to the identification, evaluation, or educational placement of, or the free appropriate public education provided to, a child. Mediation shall consist of but not be limited to an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school officials may attend mediation sessions.

2. Mediation must be conducted, attempted, or refused in writing by a parent of the handicapped child whose education is at issue before a request for, or initiation of, a hearing authorized by this Instruction. Any request by DoDDS for a hearing under this Instruction shall state how this requirement has been satisfied. No stigma may be attached to the

refusal of a parent to mediate or to an unsuccessful attempt to mediate.

D. PRACTICE AND PROCEDURE

1. Hearing

a. Should mediation be refused or otherwise fail to resolve the issues concerning the provision of a free appropriate public education to a handicapped child or the identification, evaluation, or educational placement of the child, the child's parent or the school principal having jurisdiction over the child may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of a handicapped child whose education is at issue and DoDDS shall be the only parties to a hearing conducted under this Instruction.

b. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the DoDDS Regional Director who has responsibility for the handicapped child. The petitioner shall deliver a copy of the petition to the opposing party (that is, the parent or, on behalf of DoDDS, the school principal), either in person or by first-class mail, postage prepaid. Delivery is complete upon mailing. When DoDDS petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c., below, and shall provide the other parties with a copy of this Instruction.

c. An opposing party shall submit an answer to the petition to the appropriate Regional Director, with a copy to the petitioner, within 15 calendar days of receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief.

d. Within 10 calendar days after receiving the petition, the Regional Director shall obtain the assignment of a hearing officer, who then shall have jurisdiction over the resulting proceeding. The Regional Director promptly shall forward all pleadings to the hearing officer.

e. The questions for adjudication shall be based on the petition and the answer, provided that a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

f. The Regional Director shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

g. The purpose of a hearing is to establish the relevant facts necessary for the hearing officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record, with the Federal Rules of Evidence (reference (i)) serving as a guide.

h. The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of DoDDS and to call and question witnesses.

i. Those normally authorized to attend a hearing shall be the parents of the child, the counsel and personal representative of the parents, the counsel and professional employees of DoDDS, the hearing officer, and an individual qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the child, provided the parents have the right to an open hearing upon waiving in writing their privacy rights and those of the child.

j. A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic recording shall be made available to a parent upon request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for the purpose of conforming it to actual testimony after adequate notice of such changes is given to all parties.

k. The hearing officer's decision of the case shall be based on the record, which shall include the petition; the answer; the written transcript or the electronic recording of the hearing; exhibits admitted into evidence; pleadings or correspondence properly filed and served on all parties; and such other matter as the hearing officer may include in the record, provided that such matter is made available to all parties before the record is closed under paragraph D.1.m., below.

l. The hearing officer shall make a full and complete record of a case presented for adjudication.

m. The hearing officer shall decide when the record in a case is closed.

n. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under subsection D.2., below, is pending.

2. Discovery

a. Full and complete discovery shall be available to parties to the proceeding, with the Federal Rules of Civil Procedure (reference (j)) serving as a guide.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by DoDDS shall be made available free of charge to a parent.

3. Witnesses; Production of Evidence

a. All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a department or agency of the United States Government as to any matter within the jurisdiction of that department or agency. All witnesses shall be subject to cross-examination by the parties.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. DoDDS shall pay such expenses when a witness is called by the hearing officer.

c. The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence upon his own motion or, if good cause be shown, upon motion of a party.

d. When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, upon the certification provided for in paragraph D.3.d., above, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

4. Hearing Officer's Findings of Fact and Decision

a. The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the appropriate Regional Director, with a copy to the parents, the school principal, and the Director of DoDDS.

b. The Regional Director shall forward a copy of the hearing officer's findings of fact and decision, with all personally identifiable information deleted, to the National Advisory Panel.

c. The hearing officer shall have the authority to impose financial responsibility for educational placements, evaluation, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under subsection F.1., below. DoDDS shall implement a decision as soon as practicable after it becomes final.

E. DETERMINATION WITHOUT HEARING

1. At the request of a parent of the handicapped child whose education is at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and issue a decision within the period fixed by paragraph D.1.n., above.

2. DoDDS may oppose a request to waive the hearing. In that event, the hearing officer shall rule on the request.

3. Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph D.1.g., above. A party submitting such documents shall provide copies to all other parties.

F. APPEAL

1. A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the ASD(MRA&L), or designee, within 5 calendar days of receipt of the findings of fact and decision. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete upon mailing.

2. Within 10 calendar days of filing the notice of appeal, the appellant shall submit a written statement of issues and arguments to the ASD(MRA&L), or designee, with a copy to the other parties. The other parties shall submit a reply or replies to the ASD(MRA&L), or designee, within 15 calendar days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete upon mailing.

3. The ASD(MRA&L), or designee, shall determine the matter on appeal, including the making of interlocutory rulings, within 20 calendar days of receiving timely submitted replies under subsection F.2., above. The ASD(MRA&L), or designee, may request oral argument at a time and place reasonably convenient to the parties.

4. The determination of the ASD(MRA&L), or designee, shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under P.L. 94-142 (reference (a)) to bring a civil action with respect to the matters in dispute in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

5. No provision of this Instruction or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this Instruction before seeking judicial review of a determination made under this Instruction.

G. PUBLICATION AND INDEXING OF FINAL DECISIONS

Final decisions in cases arising under this Instruction shall be published and indexed in accordance with DoD Directive 5400.7 (reference (k)) to protect the privacy rights of the parents and children who are parties in those cases.